

**MEETING OF THE LAND SURVEYING TECHNICAL ADVISORY COMMITTEE
OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

**Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California, 95833
(916) 263-2222**

Friday, March 16, 2012, 1:00 P.M.

TAC Members Present: Michael S. Butcher, PLS; Michael B. Emmons, PLS;
Paul J. Enneking, PLS

TAC Members Absent:

Board Liaisons Present: Patrick J. Tami, PLS

Board Liaisons Absent: Michael Trujillo

Board Staff Present: Ric Moore, (Executive Officer); Raymond L. Mathe, PLS;
Nancy Eissler (Enforcement Manager); Celina Calderone
(Board Liaison); Tiffany Criswell (Enforcement Analyst);

1. Roll Call to Establish a Quorum

The meeting was called to order by Michael S. Butcher at 1:10 p.m. Roll call was taken, and a quorum was established.

2. Public Comment

No report given

3. Approval of LS TAC Minutes, April 22, 2011

Mr. Butcher indicated that under, Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762, JPPC should be clarified to indicate Orange County JPPC.

In addition, under the Discussion and Possible Recommendation Regarding the Definition of "Establish" as it relates to Business and Professions Code Section 8762, where it is referenced that Mr. Tami suggests use words in 8726(c) should show that it was Mr. Butcher who suggested language.

Mr. Enneking referenced notes from prior TAC meeting in which he indicated Mr. Moore was to have a discussion with Mr. Duke regarding rescinding his prior opinion relating to Item number 6, Discussion and Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762.

MOTION: Mr. Enneking and Mr. Butcher moved to approve minutes

VOTE: Motion carried

4. Discussion and Possible Recommendation Regarding the Definition of "Establish" as it relates to Business and Professions Code Section 8762

Mr. Butcher spoke to CLSA's representative and it was indicated that it will be in the April 13 amendment to the omnibus bill. He added that ACEC was in support. The bill will be SB 1576 as indicated by Legislative Advocates. Mr. Tami suggested speaking to CEAC as it may impact their operations.

5. **Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762**

Mr. Butcher indicated that this discussion revolves around a letter from 1998 from Mr. Duke. Mr. Emmons shared an editorial comment in that he believes this opinion is not correct. Mr. Butcher stated that the monumentation of an easement should require the filing of a record of survey and that he does not believe it is mandatory by what he interprets. An easement is a right to use and by setting a monument on the easement you are not mandated to file. His opinion is that if a monument is set, you should file. He would like to see if a monument is set on an easement that a record of survey is mandatory and would like to explore language to do so.

Mr. Tami asked if there is public protection that needs to take place. If someone sets a physical feature with their tag and number to depict the lines of an easement that it is important for public protection that it is included in a public record. Mr. Butcher expressed that it would be a benefit to the public that if a monument is set that it should be filed. Mr. Moore indicated if you are having anything physically out there that references a document that affects a title, somehow the public should be aware of it. He added that it is possible that it should not be all inclusive or mandatory that an easement is marked because it is not always necessary that easements be marked in the field. Mr. Mathe suggested another view, subdivision map act, 66426.5, discusses conveyances to agencies as being not part of the subdivision map act. It is considered a right of way.

Mr. Butcher stated that a transfer of property or right of way would not require you to file a record of survey in a deed or other instrument of title. If you perform a field survey, he believes that you can practice land surveying and you should file, relating to land boundaries and property lines. It is not clear that it is mandatory but believes it should be. Most of these cases are on easements and sees the value in making it mandatory in certain circumstances as it is not necessary to monument everyone and is not required in every case. We need to establish if we need to mandate and if so, is a corner record or record of survey sufficient. Corner records are being abused and there should be more records of survey. Mr. Enneking sees this as a case of professional practice opinion as he does believe in certain situations where the public would be protected.

Mr. Emmons indicated that many government agencies do not file the appropriate records such as a right of way; it would be good to regulate.

Mr. Moore suggested amending 8765 which explains when a record of survey is not required, possibly including language that would provide leeway to not be an all-inclusive situation.

Mr. Mathe stated that 8726, surveying of easements fall into the practice however it may not necessarily carry over to 8762.

Mr. Butcher indicated that it would be beneficial to know the legislative intent.

Ms. Eissler added that with legal opinions and interpretations, it usually starts with plain English reading, standard dictionary definitions of words and if there are still questions then you go into legislative intent which can be broad. She does not believe it would hurt to ask Mr. Duke to review again. If his opinion is the same he can expand on it to address the issues raised.

Mr. Woolley who wrote the letter indicated that in Black's Law dictionary defines easement as property. He believes it is clear when an easement is property and it indicates property lines. There is a distinct difference between boundary and property lines and they are not the same. Public record perpetuates for history and public protection. There is more litigation over easements than fee lines. Agencies in Southern California file records of survey on all.

Mr. Butcher stated that he agreed with the benefit however is not sure if current law requires it but believe it should.

Mr. Woolley added that an easement is considered property. 8762(b) includes property lines and believes monumentation is secondary.

Mr. Enneking suggested asking Mr. Duke to revisit this issue and define property as it relates to easement and the legislative intent and boundary.

6. **Discussion and Possible Recommendation as it relates to Business and Professions Code Section 8741(a)**

Mr. Butcher indicated CLSA is sponsoring. He explained that it was proposed to remove the exemption for EITs and Civil PE's. ACEC agreed that EITs should be removed and the civil PE's will continue to have the exemption. This will be added to the April 13 SB 1576 amendment.

7. **Discussion and Possible Recommendation as it relates to Business and Professions Code Sections 8742(b), 8773(a), and 8773(b)**

Mr. Butcher indicated that CLSA proposed to update title of BLM manual. Language was worked out with legislative counsel.

8. **Discussion and Possible Recommendation as it relates to Subdivision Map Act Sections 66442 and 66450**

Mr. Butcher CLSA Proposal removing expiration date requirement on stamp or seal.

9. **Review of Board Rule 425 for Possible Revision**

Mr. Moore indicated when reviewing applications to qualify for licensure he refers to this regulation and believes the applicant does also. His concern is that he is not aware how long this regulation has been in its current form and would like the TAC to review to determine whether or not it needs to be updated as it affects how applications are reviewed.

Mr. Tami asked whether or not checking of field notes is considered field or office work. It is possible that items need to be updated due to new technology.

The Board has previous rulemaking file that the TAC could review however, Mr. Enneking is not sure if history is needed to ensure that the rule is current.

Mr. Moore would like TAC members to review and discuss at a future meeting and is asking for guidance and possible making adjustments or revisions as needed.

10. Review selected Board actions from March 8-9, 2012 Board Meeting

Mr. Moore provided information that currently the applicants apply for the EIT/LSIT on a self-certifying, one page application. There are changes to the administration of these examinations by NCEES. Commencing January 1, 2014, these examinations will be computer based. There will be open windows on a quarterly basis of testing nationally and possibly internationally. NCEES has proposed that the Board may want to consider how applicants are approved for this examination process. One of the proposals is for every one approval the Board has; the applicant can sit up to three times. If the candidate fails, the candidate can register with NCEES and sit again in the next window without Board approval. These examinations can only be taken one time per window. Results would be provided within five to ten days. Staff proposed to the Board to change the middle part of the process, and have the applicants register with NCEES, take the examination, and once they pass, they would then apply with the Board. This would reduce the impact on workload.

Mr. Tami explained exam security stating the reason why there will be an initial delay in results is that data is being collected to learn how fast a question is answered and the times it is revisited and other statistical data. The data collected will help equate the questions such as content and difficulty for a more comprehensive item bank. He elaborated on the security by indicating that each candidate must empty their pockets, and each will have a locker and each person will be uniquely identified.

Mr. Moore indicated the Land Surveying examination will be offered for the first time using computer based testing on April 23, 2012. There are approximately 403 approved applicants and about 340 currently scheduled. There have been some technical anomalies in scheduling that are being resolved with the computer based testing provider. Examinations are being offered in Oregon and Nevada as well.

11. Closed Session – Examination Procedures and Results, Review of Applications and Investigations, and Administrative Adjudication (As Needed) [Pursuant to Government Code sections 11126(c)(1), 11126(c)(2), and 11126(c)(3)]

No report given

12. Open Session to Announce the Results of Closed Session

No report given

13. **Date of Next TAC Meeting – July 20, 2012**

The next TAC meeting is scheduled for Friday, July 20, 2012. Time will be determined by agenda.

Discussion will include monument and easement and Board Rule 425.

14. **Other Business Not Requiring Committee Action**

Mr. Moore indicated that there are many issues recently brought to CLSA and the Board's attention regarding enforcement cases that have been opened surrounding 8771(b). Larry Kereszt, enforcement analyst, has been assigned to handle any cases pertaining to 8771(b) and to work on cases relating to unlicensed activity.

Mr. Moore added that a legislative/regulation committee was established among staff to ensure that legislative and regulation functions and knowledge is handled by more than one person internally and externally. Staff includes Larry Kereszt, Jeff Alameida, and Joanne Arnold.

Outreach will be administered by Brooke Phayer.

Mr. Tami informed the TAC that the Board is now accepting credit card renewals.

The Board Newsletter will be distributed in the coming week.

15. **Adjourn**

Meeting adjourned at 3:03 p.m.

PUBLIC PRESENT

David Woolley

Roger Hanlin